IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1872 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGVANBHAI KANJIBHAI TOTI AND OTHERS
Versus
PATEL GANESHBHAI VALABHAI AND OTHERS

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Appearance :
MR MEHUL H RATHOD for the petitioners
MR SUNIL K SHAH for Opponent(s) : 3.2.1, 3.2.2,3.2.3

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 13/03/2006

ORAL JUDGMENT

BY filing this revision application under Section 115 of the Civil

Procedure Code the petitioners have prayed for quashing and setting aside the order passed by the learned Judge of the Executing Court below Exhibit 49 in Regular Darkhast No.33 of 1989. By the said application, the present petitioners had prayed that proceedings of Regular Darkhast No.33 of 1989 be stayed under Order XXI Rules 26 and 29 of the Civil Procedure Code. The learned Judge has not accepted the prayer of the petitioners for staying the execution proceedings and not to proceed with application Exhibit 45 and 46 in Execution Petition. The order in question is not revisable under Civil Procedure Code as it cannot be said that the entire execution application is disposed of by the impugned order. Mr Rathod, however, submitted that the petitioners would like to file a fresh application before the Executing Court stating that the execution petition is not maintainable against the petitioner and the decree is not executable against the petitioners independently. Mr Rathod, therefore, seeks permission of this Court to withdraw this revision application for the said purpose. Permission as prayed for is granted. Civil Revision Application stands dispose of as withdrawn. Learned advocate Mr Shah submitted that he has no objection if the interim relief which is operating till today is extended up to 31.3.2006. It is accordingly ordered that the interim relief which is in operation is ordered to be extended till 31.3.2006.

It is clarified that this Court has not expressed any opinion on the merits. If any such application is made by the petitioners before the executing court, the same may be decided by the executing court in accordance with law and such application may not be rejected only on the ground of earlier order passed below application Exhibit 49.

Rule is discharged. Interim relief is vacated subject to what is stated herein above. No order as to costs.

(P.B.Majmudar, J.)

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